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# ACTS OF DISPOSSESSION AND APPLICABLE INVALIDATING LAWS

This study involves a description of the methods of dispossession by the enemy of property owned by inhabitants of occupied territories and a summary of the laws of the Allied nations under which such acts could be invalidated.

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## INTRODUCTION

The first formal United Nations action with respect to German acts of dispossession was taken on 5 January 1943 when a declaration regarding forced transfers of property in enemy-controlled territory was issued. The participating governments[1/] declared that they;

> "Hereby issue a formal warning to all concerned, and in particular to persons in neutral countries, that they intend to do their utmost to defeat the methods of dispossession practiced by the governments with which they are at war against the countries and people who have been so wantonly assaulted and despoiled.
>
> "Accordingly the governments making this declaration and the French National Committee reserve all their rights to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect, of the governments with which they are at war or which belong or have belonged, to persons, including juridical persons, resident in such territories. This warning applies whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected.
>
> "The governments making this declaration and the French National Committee solemnly record their solidarity in this matter."

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1/ The Union of South Africa, the United States of American Australia, Belgium, Canada, China, the Czechoslovak Republic, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, Greece, India, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Yugoslavia and the French National Committee.

In pursuance of this declaration a Sub-Committee on Acts of Dispossession was appointed with the following terms:

> "To consider the scope of existing legislation of the Allied countries under which transfers and dealings of the kinds referred to in the Declaration would be or count be invalidated; in this connexion to receive and collate information as to the methods adopted by the Axis powers and their associates to secure control of property, rights or interests in Allied territory or belonging to residents in such territory; and to report to the Committee as soon as possible."

The present memorandum is based upon the reports of this committee and presents a brief survey of the methods used by Axis powers to secure control of property in occupied countries and of the legislation of the Allied powers under which such dealings might be invalidated.

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## ACTS OF DISPOSSESSION AND APPLICABLE INVALIDATING LAWS

An act of dispossession, as contemplated by the Inter-Allied Declaration of 5 January 1943, may be defined to be any act by the enemy or his agents causing the whole or partial deprivation of property rights of non-enemies and tending primarily to subserve immediate or future enemy interests.

The methods employed to effect such deprivations range all the way from undisguised looting or confiscation to open-market purchase for prima facie "fair" consideration. Existing legislation of the Allied countries under which such acts could be invalidated varies widely from country to country in character and extent of applicability.

Governmental policy regarding the classes of cases falling within the jurisdiction of invalidating legislation cannot be predicted, and thus need not be discussed here. However, it should be noted that political or economic expediency will, in the end, dictate whether or not a particular government will recognize justification for dispossession under the terms of the Hague Convention (IV) of 1907. Possible bases for such pleas of justification will be indicated here by reference to the number of the relevant Article of Section III of the Annex to the Convention.

It should be noted that certain acts of dispossession, such as the wanton destruction of property, or the complete liquidation of workshops, are not susceptible to invalidation, and that the remedy for acts of this kind is reparation.

This memorandum will confine itself to a summarization, by types, of known acts of dispossession which are capable of being invalidated, and a review of existing invalidating legislation by category.

## I. DIRECT METHODS OF DISPOSSESSION

These are the methods by which property is taken by the enemy, all rights of ownership vesting in him.

### A. Looting

This term is meant to include private, disorganized taking of property by troops and civil officials. The extent of such looting is difficult to ascertain. While most instances may be classified as outright theft, it is probable that some justification may be advanced upon theories of military necessity (52).

### B. Compulsory Surrender

Various categories of property have been required to be surrendered without compensation. In certain cases, such as the surrender of firearms and wireless receiving sets, the justification may be security (43) (53). In other cases, such as the transfer of rails and rolling stock to Germany or other countries, some plea of military necessity might be expected (53). In still other cases the same

plea has a less direct application, as where machines and equipment were similarly transferred for the benefit of the German war effort. Finally, such property as diamonds (in Holland) and works of art were taken without any attempt at justification.

For certain types of property subject to compulsory surrender compensation has been paid. These include precious metals, foreign exchange and securities, certain industrial stocks and warehoused goods, industrial and agricultural products on requisition, small shipping (tugs, barges, etc.), and automobiles and bicycles (52).

C. Dispossession of Property of Controlled Enterprises

Besides the compulsory surrender of particular types of equipment by firms controlled by the enemy as well as by enterprises without their control, controlled firms have been deprived of other properties by their masters.

Such a case is the unlimited, royalty-free use of patents which might assist war production for the benefit of the enemy. It is believed that no attempt has been made to seize the patent itself, but only that the owner's right of exclusive use was appropriated.

Quite similar to this use of patents is the transfer of commercial secrets, by the enemy controllers of enterprises, to enemy firms engaged in similar businesses. This type of property includes such matters as patent "know-how", secret processes, and information relating to customers.

In addition, controlled firms have been required to place large amounts of their corporate savings into German investments, which will most likely have lost much of their value after the war.

D. Disappropriation of Institutions and Individuals

In all cases State property has been taken and used without compensation. In most instances, such as where the property -- as buildings (55) -- remains in situ, or where the property is readily identifiable -- works of art (56) -- laws invalidating such dispossession may readily be effectuated. In many instances, however, as in the devastation of state forests (55), only reparations may be sought. These same observations apply to property of lesser governmental units, such as states, counties, and municipalities.

Property of political parties, labor unions, and other non-commercial institutions has likewise been seized by the enemy.

All property of certain classes of persons has been taken outright. The enemy's anti-Jewish policy is notorious, and nowhere have the Germans failed to seize the property of these persons. In the same category do the Germans place the property rights of citizens of occupied countries who resist the occupation government, or who continue to support the legitimate government or its allies. The property of the citizens of Germany's enemies is likewise disappropriated.

## II. INDIRECT METHODS OF DISPOSSESSION

These are methods wherein control and use of property are effected without initial assumption of title by the enemy. Control is obtained either through purchase intimidation, or the appointment of administrators of individual properties. In the main, the funds used for these purchases are derived from the inhabitants of the occupied countries through taxation of one form or another. In the absence of facts proving intimidation or other compulsion, dispossession capable of invalidation may, perhaps, be demonstrated by a showing that the source of funds used was the people of the occupied State, and that the enemy "owners" thus hold the properties as trustees for the State during the period of occupation.

### A. Direct Taxation

Two types of direct taxation have been used, apparently under the terms of Articles 48 and 49 of the Hague Convention. First, the general tax used to defray the ordinary expenses of administration, and second, the payment of occupation costs, for the needs of the occupying forces and the expenses of the occupation itself. The amounts of both of these taxes have been grossly inflated over and above the actual costs involved, and the overage used to make the purchases referred to below.

### B. Indirect Taxation

Special currency (Reichskreditkassenscheine) was issued by the Germans in occupied countries before formal

arrangements were made for the payment of occupation costs. This currency was redeemable by the central bank of the occupied country, and was to be credited against the occupation cost by claim against the German bank of issue (Reichskreditkasse). However, in many countries these claims remain outstanding, and the net result has been to cause a currency inflation.

Another sort of indirect taxation lies in the fixing of the exchange rate between the local currency and the German mark to the advantage of the mark. In addition, the central banks of occupied countries are required to pay German debit balances in exchange for credits with a special German clearing bank (Verrechnungskasse). Due to the large volume of trade by the occupied countries with Germany, these devices give enhanced buying power to the Germans, at a corresponding expense to the inhabitants of the occupied countries. Furthermore, the prices at which the occupied countries export have been set at pre-war levels.

Pre-war price levels also apply to reimbursement for goods compulsorily surrendered.

C. Appointment of Administrators

In special cases, mainly banking and loans, the Germans have appointed Commissioners to supervise the activity of an entire branch of commerce. Controllers of individual enterprises have been appointed where their

managers or proprietors have fled the country. In most occupied countries such enterprises include many which are of great industrial importance. Managers are also appointed to control and exploit armaments plants (53).

D. Intimidation

How great a use of intimidation is made in controlling enterprises cannot be known. However, it may be assumed that some of the policies of enterprises in occupied countries which are manifestly commercially inexpedient may be induced by fear of the results of German displeasure.

While it does not appear that the entire ownership of enterprises has been acquired by forced sale -- presumably because methods of direct dispossession are more effective -- it is understood that owners of controlling blocks of share capital have been forced to sell these interests at prices fixed by the enemy.

Both legal intimidation -- decrees with punitive provisions -- and the exercise of management control have forced enterprises to enter into cartels and market agreements which may be to their commercial disadvantage, and are, at least, means in themselves for the continuing control of such enterprises.

What might be called commercial intimidation is the practice of using the credit facilities of the banks to shape the policies of enterprises by extending or withholding bank credit.

E. Purchases for "Fair" Consideration

Control of some companies is effected by purchase of their shares on the open market. In certain cases companies are induced to increase their share capital, and the total new issue is bought by the enemy, sometimes through the prior purchase of "rights".

German firms sometimes participate in the holding of new enterprises formed by native companies, as in the case of France-Rayonne, which was apparently formed to direct the entire French production of synthetic fibres. Here all the French synthetic fibre manufacturers contributed in proportion to their own capital, while the German cartel contributed 33 percent of the total, each contributor receiving an interest proportionate to the contribution.

There is a curious modification of this sort of common stockholding among French and German firms in the case of Francolor, the new French dyestuff monopoly. All of the shares of this company were distributed to the three major French dyestuffs firms in proportion to the value of the four principal dyestuff factories ceded by them to the new enterprise. The three companies, in turn, transferred 51 percent of this stock to I.G. Farbenindustrie in return for shares of stock of I.G. of equivalent value.

## III. ALLIED LEGISLATION INVALIDATING ACTS OF DISPOSSESSION

It is impossible, in any brief space, to analyse such laws country by country. For this purpose the 77-page Appendix to the Interim Report of the Inter-Allied Sub-Committee on Acts of Dispossession should be referred to. A summary, by types, is all that can be attempted here, references to particular countries being made only for purposes of exemplification.

### A. General

Such legislation is of three general types:

1. Legislation to set aside transactions effected during the period of occupation in territories occupied by the enemy.

2. Legislation to secure to the rightful government or its agents, property outside the occupied territory which might otherwise have been claimed to belong to persons within the occupied territories, and accordingly subject to such pressure as the enemy might impose.

3. Custodial or freezing legislation (operative in non-occupied countries) the object of which is to prevent the dissipation of moneys due and properties belonging to residents of occupied territories by providing either that they be turned over to a properly authorized Custodian or that no transactions affecting them should be allowed without proper authority.

The first type of legislation is of very little immediate practical effect, since it can hardly be enforced at

present in the occupied territories. It may also be subject to change upon its confirmation by new governments, or upon the confirmation of restored governments. However, some of the law comprising this body of legislation is basic and is merely suspended during the occupation. The chief present purpose of this legislation is to serve as a warning to persons attempting to benefit by the acts of dispossession. If there are no major changes in these laws they will, by and large, become effective instruments to defeat the enemy's purposes and the aims of his collaborators.

The second and third types of legislation are safeguards not only for the interests of the original owners of property located in neutral and Allied countries, but for the interests of the Allies. Their purpose is to prevent the use of these properties for the benefit of the enemy through the mediacy of non-enemy cloaks and dummies. In some cases legislation of the second type has the additional (though unexpressed) function of supplying the interested Government-in-Exile with funds for its operation, and for the assistance of the Allied war effort. While there exists, in theory, the possibility of conflict between these two types of legislation, it is understood that, in practice, this conflict has not become apparent.

B. Legislation to Set Aside

This type of legislation contemplates four kinds of transaction:

1. Transactions void ab initio -- completely null and void from their inception.

2. Transactions which are declared to be presently void, but which may become validated by legal action after the restoration of legitimate government.

3. Transactions which are declared to be valid, but which are capable of being voided after the restoration.

4. Transactions which are, and will continue to be, valid.

The laws also differentiate between the status of State property, the property of lesser governmental institutions and enterprises affected with a public interest, and private property. They also distinguish between transactions accomplished through confiscation or seizure, transactions accomplished in the normal course of civil administration, and transactions involving third part holders in good faith.

There is little uniformity among the laws of the various governments as to the circumstances and kinds of cases in which the above factors combine to form legal principles. The most convenient mode of discussion is, therefore, to illustrate such principles by exemplifying the differences between the laws of the various countries.

C. State Property

The closest approach to a general principle regarding acts disposing of State property by the enemy, is that such acts are void ab initio, except when arising in the course of normal administration. However, the extremes limiting this principle range from the Yugoslavian law that all transfers

of State property are void, to the Polish law expressly providing that such transfers, to be void, must not only be without the normal course of administration, in good faith, but without the terms of the Hague Convention. The Norwegian principle is that the alienation or mortgaging of State property is not void ab initio, but void, subject to validation by confirmation of the restored government.

Transfers made in the normal course of administration would appear, generally, to be valid, except in the case of Poland, where they are void until validated.

D. Property of Public Institutions, etc.

The laws regarding transfers of this type of property are about the same, from country to country, as the laws regarding the transfer of State property. The only notable exception is the law of Belgium which excludes from consideration possible acts arising in the course of normal administration and declares void ab initio all acts of disposal of such property the object of enemy confiscation, seizure, forced sale, or of other enemy measures.

E. Private Property

While the legislation of the various governments, in terms, declare acts of dispossession of private property to be void ab initio, most of them provide that the property must be reclaimed from the holder within a fixed period of time (usually without compensation to the holder, even one acquiring in good faith), so that the more exact concept would be one of voidability. The notable exception is the law of Poland which

holds that all such dispositions without the terms of the Hague Convention, and not within the course of normal, honest administration, are wholly void. In addition, Polish law provides that all acts of the occupying authorities with respect to Polish-owned property situated outside of Poland are void.

The Norwegian law holds that the transfer of confiscated property is wholly void, and it would appear that no statute of limitations bars repossession. However, transfers made under duress, or otherwise affected by extraordinary war conditions are voidable on an ad hoc basis, in proceedings brought within six months of a general armistice. As to transfers of private property affected with certain public interests (such as water power, forests, and other natural resources), these acts are void until validated by the State.

F. Legislation Securing Extraterritorial Property

This kind of legislation is intended, as has been indicated above, to obtain effective control, by the legitimate government, of property located without the occupied country, owned by its citizens. It takes two forms.

1. Laws vesting such property in the State or a State official as trustee for the true owner.

2. Laws conferring on companies incorporated under the laws of the State the power to transfer their administration to places outside the occupied territory, and to revoke the authority of officials of such companies who remain in occupied territory.

Under the first type, the Netherlands government has exercised very broad powers with respect to all of the extra-territorial property owned by its citizens. The Norwegian operations, under a law of this type, have been confined to the requisitioning of certain particular assets abroad, such as ships.

The laws of Belgium, Luxemboürg, and Poland are of the second type. No major dissimilarities exist between them.

G. Custodian and Freezing Legislation

This type of legislation is confined to the United States and to most of the members of the British Commonwealth. By various administrative devices, such as a general prohibition, subject to specific licensing, of certain transactions, and the vesting in or supervision of physical properties in a Custodian, the properties within such jurisdictions of inhabitants of occupied countries are made secure against enemy use of such resources.

Because of extrinsic legal considerations these laws vary from country to country in the extent of the detail with which they are set forth. In the main, however, the differences between the laws are only of mechanics. The effect and method, as described above, are substantially similar.

## IV. NOTE REGARDING THE FRENCH NATIONAL COMMITTEE

The Committee's approach to the enactment of specific invalidating laws is, in many ways, much more realistic than that of most other Governments-in-Exile.

It takes the position that:

It does not claim the right to enact legislation which could be operative in France. The laws of France, prior to the Armistice, would make void or voidable many transactions contemplated by the Inter-Allied Declaration, but would not affect complete coverage. The revocation or suspense of such laws by Vichy is invalid because that government itself, being an agent of the Germans, is invalid. The Committee is willing, in cooperation with the United Nations, to prepare additional appropriate legislation which it would cause to be submitted as the appropriate time to the provisional Government of France, or to Parliament.